IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6214 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
SOMABHAI KACHRABHAI SOLANKI & ORS. - Respondent(s)

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Appearance :
Shri H. S. Munshaw for Petitioner(s).
Shri R. E. Variava for Respondent No.1.
None for Respondent Nos.2 – 3 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/08/2007

ORAL JUDGMENT

By this petition, the petitioner, being aggrieved by the order

dated 27th April, 1998 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 in Gratuity Application No.50 of 1997 and the appellate order dated 9th June, 1999 passed by the Appellate Authority under the Payment of the Gratuity Act, 1972 in Appeal Application No.45 of 1998, is before this Court with a submission that the orders passed by the Controlling Authority and the Appellate Authority are patently illegal and bad and deserve to be set aside.

2. To make the records clear, it is necessary to note that the respondent No.1-Somabhai K. Solanki was working with the Gujarat State Road Transport Corporation as a conductor; after he was found involved in financial irregularities, he was issued a charge-sheet and after holding the full-fledged inquiry, he was ordered to be removed from the services. Being aggrieved by the order passed by the Disciplinary Authority, the respondent-workman preferred a departmental appeal, which was rejected, but, later in the second appeal filed before the higher authority of the department, his plea was accepted, the order of termination was set aside, he was directed to be reinstated, but, at the lowest of the pay-scale, i. e. Rs.775/- per month. The appellate order came to be made on 27th September, 1996. However, before the appellate order could be made in the departmental second appeal, the workman superannuated on 30th November, 1995.

2.1 The workman, in view of his reinstatement, notionally joined and also made an application for payment of gratuity. The department paid a sum of Rs.24,870/- treating his pay to be at the lowest, that is, Rs.775/- and other emoluments per month. The workman, being aggrieved by the said payment, preferred an application before the Controlling Authority under the Payment of Gratuity Act, 1972, which allowed the application and directed the petitioner to pay a sum of Rs.19,898/- to the workman. The appeal came to be dismissed. Therefore, the petitioner-Gujarat State Road Transport Corporation is before this Court.

3. Shri H.S. Munshaw, learned Counsel for the petitioner, submitted, that the Authorities under the Act were unjustified in holding that the last drawn salary would be Rs.1,218/- and not Rs.775/- and also erred in holding that Rs.1,218/- was the last drawn salary. His submission is that on reinstatement of the workman, he was placed at the lowest of the pay-scale and would be taken to be working for Rs.775/- only.

4. Shri R. E. Variava, learned Counsel for the respondent-workman, on the other hand, after taking me through Section 4(2) of the Payment of Gratuity Act, 1972, submitted that the gratuity is to be paid for 15 days for the work of each year on the basis of the last drawn

salary. According to him, before the removal, the workman was getting Rs.1,218/- per month, therefore, that was the last drawn salary.

5. It is not dispute before me that in absence of the second appellate order, the workman stood dismissed from the services. It is the second appellate order by the departmental head which opens the gate and allows the workman to enter into the workplace. The order passed by the second Appellate Court would bind both the parties. If on one side it binds the Department/Gujarat State Road Transport Corporation to reinstate the workman, it compels, rather mandates, the workman to join at the scale of Rs.775/- per month. The workman cannot be allowed to say that for the purposes of back-wages, the calculation would be made on the basis of Rs.775/- per month for the period between the termination and superannuation and for the purpose of gratuity, the last drawn salary would be taken to be Rs.1,218/-. If such a stand of the workman is accepted, then, it will create an impossible situation and it may not be possible for anybody to reconcile that.

6. Section-4 of the Payment of Gratuity Act, 1972 directs that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Sub-section-2 of Section-4 of the Act, which is the subject matter of controversy, reads as under:

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation – In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

8. Shri R. E. Variava, learned Counsel for the workman, submits that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to the employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. His submission is that if the last drawn wages were Rs.1,218/- per month, then, for the purpose of Section 4(2) of the Act,

the calculation ought to have been made at the rate of Rs.1,218/- per month.

9. The argument raised by the learned Counsel for the respondent is in oblivion of Section-2(s) of the Act, which defines "wages". Section-2(s) of the Act provides that "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

The moment Section 4(2) of the Act refers to the wages, then, the word "wages" will have to be understood in view of the definition, as provided under the Act itself. "Wages" would mean all emoluments which are earned by an employee, which are paid or are payable to him in cash. If the word "wages" includes the amount paid or payable, then, these two words, "paid" and "payable", are to be understood in their distinct sense with a further understanding that the law/legislature does not provide anything which is superfluous, superficial or useless or unnecessary. The word "paid" would mean what was wholly paid and the word "payable", in its ordinary dictionary meaning, would mean what is, in fact, receivable by such person. In a

given case, the workman would be entitled to gratuity equal to the amount of wages last paid to him if there are no change in circumstances, but in a given case, where the circumstances change and he becomes entitled to receive some different wages, then, he would be paid gratuity on the basis of the wages which are payable to him.

10. In the present case, if the reinstatement was with a direction to the respondent-workman to join at the minimum pay scale of Rs.775/- per month, then, Rs.775/- would be the wages, which could only be paid to the workman, and the same would be payable to him. Even otherwise, if for the purpose of reinstatement, the respondent-workman is entitled to the back-wages at the rate of Rs.775/- per month from the date of termination to the retirement, then, that would be the wages paid and payable to him and on the basis of that only the workman would be entitled to the payment of gratuity.

11. For the reasons stated aforesaid, I hold that the learned two Courts below were unjustified in holding that the workman would be entitled to gratuity on the basis of wages calculated at the rate of Rs.1,218/- per month. 'The orders passed by the Controlling Authority and the Appellate Authority are hereby set aside and quashed. It is held that the workman would be entitled to the gratuity on the basis of the wages calculated at the rate of Rs.775/- with other emoluments, as

provided in Section 2(s) of the Act, per month, which may include increments, if any.

Rule is made absolute. No costs.

[R.S.Garg, J.]

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